

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515–0545**

March 30, 2021

The Honorable Peter Buttigieg  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

Dear Secretary Buttigieg:

Congratulations on your appointment to serve as Secretary of Transportation. Working together, we are confident in our ability to strengthen our country’s existing transportation infrastructure and build toward a greener and more accessible future. Today, we write to draw your attention to a harmful vestige of the previous Administration: the lack of adequate consumer protections for airline passengers, an issue of particular importance during the coronavirus pandemic.

Rather than working to protect passengers during the pandemic, in November 2020 and at the direction of your predecessor Elaine Chao, the Department of Transportation (DOT) issued a new rule to narrow the definition of “unfair and deceptive practices” in the context of air travel.<sup>1</sup> Lobbyists for the airline industry explicitly requested this rule.<sup>2</sup> It effectively restricts the agency’s own enforcement and rulemaking efforts against deceptive airline practices.<sup>3</sup> As a result of this ill-conceived ruling, and in the absence of enforcement by the previous Administration, the traveling public currently lacks adequate protections against COVID-19. For

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<sup>1</sup> Department of Transportation, “U.S. Department of Transportation Issues Final Rule Providing Clarity on Unfair and Deceptive Practices in Aviation Consumer Protection,” (Nov. 2020) at: <https://www.transportation.gov/briefing-room/us-department-transportation-issues-final-rule-providing-clarity-unfair-and-deceptive>

<sup>2</sup> David Shepardson, “U.S. finalizes new rules sought by airlines on consumer protections,” *Reuters* (Nov. 2020) at: <https://www.reuters.com/article/us-usa-airlines-regulations/u-s-finalizes-new-rules-sought-by-airlines-on-consumer-protections-idUSKBN2872MB>

<sup>3</sup> According to FTC Commissioner Chopra, after the FTC adopted its current unfairness standard in 1980, “the number of enforcement actions and rulemakings plummeted, leaving a vacuum that hobbled development of the law.” Comment of Federal Trade Commissioner Rohit Chopra, Docket No. DOT–OST–2019–0182 at: [https://www.ftc.gov/system/files/documents/public\\_statements/1576174/chopra\\_comment\\_to\\_us\\_department\\_of\\_transportations\\_dot-ost-2019-0182.pdf](https://www.ftc.gov/system/files/documents/public_statements/1576174/chopra_comment_to_us_department_of_transportations_dot-ost-2019-0182.pdf) The DOT appeared to agree, as in documents describing the proposed rule, it acknowledged that the proposal “could translate into the department performing fewer enforcement and rule-making actions” against airlines and could “lengthen the time needed to complete the actions.” Hugo Martin, “Critics say airlines’ proposed rule on unfair practices would make regulation harder,” *LA Times* (Feb. 2020) at: <https://www.latimes.com/business/story/2020-02-27/airlines-unfair-practices-rule>

instance, the DOT has not yet issued enforceable requirements for airlines and airports to implement social distancing.<sup>4</sup> This has led to crowded aircrafts, with only a handful of airlines opting to block out middle seats. As an article published in the CDC's *Emerging Infectious Diseases Journal* indicates, "seating proximity was strongly associated with increased infection risk."<sup>5</sup>

The November 2020 DOT rule, which created procedural hurdles for "unfair and deceptive practices" rulemaking and adjudication, has also limited the avenues for DOT to act against abusive airlines and travel agencies that have not issued flight refunds. According to the January 2021 issue of *Air Travel Consumer Report*, in November 2020, there were 3,242 unique complaints filed by consumers who had requested but not received refunds—an increase of 2,794 percent from the 112 complaints filed in November 2019.<sup>6</sup> What limited refund regulations currently exist have not been adequately enforced by the previous Administration.<sup>7</sup>

For these reasons, we request that the DOT swiftly promulgate a rule to codify basic consumer protections for air travelers. To that end, we request answers to the questions below:

1. What is the total number of backlogged consumer-requested air travel refunds, and how does the DOT plan to address this backlog?
2. What is the DOT's anticipated timeline for resolving all existing consumer complaints related to air travel refunds?
3. Will the DOT be reviewing the rule finalized by the Department in November 2020 that narrows the definition of "unfair and deceptive practices?"
4. Does the DOT plan to convene a meeting with stakeholders from the airline industry and public health experts in order to determine an appropriate and enforceable set of regulations related to protecting passenger health and stopping the spread of the coronavirus?

We look forward to working together to promote meaningful protections for the flying public during this unprecedented global health crisis. We would also welcome a conversation on the topic, which we would be happy to schedule at your convenience.

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<sup>4</sup> On January 29, 2021, the CDC issued an order requiring the use of face masks on nearly all forms of public transportation, including on airplanes and in airports. This mandate, though necessary, was far from sufficient to safeguard passenger health. "Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs," *CDC* (Jan. 2021) at: [https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC\\_GMTF\\_01-29-21-p.pdf](https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC_GMTF_01-29-21-p.pdf)

<sup>5</sup> Khanh N, Thai P, Quach H, Thi N, Dinh P, Duong T, et al., "Transmission of SARS-CoV 2 During Long-Haul Flight," *Emerging Infectious Diseases* (Nov. 2020) at: <https://dx.doi.org/10.3201/eid2611.203299>

<sup>6</sup> "Air Travel Consumer Report," *Department of Transportation, Office of Aviation Consumer Protection* (Jan. 2021) at: <https://www.transportation.gov/sites/dot.gov/files/2021-02/January%202021%20ATCR%20rev%202-2-2021.pdf>

<sup>7</sup> "Refunds," *Department of Transportation* (April 2020) at: <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>

Sincerely,

Katie Porter  
Member of Congress

Joe Neguse  
Member of Congress

Jahana Hayes  
Member of Congress

Paul Tonko  
Member of Congress

Henry C. "Hank" Johnson, Jr.  
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